



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 29, 1996

Mr. Richard Ybarra  
Assistant Attorney General/Open Records Coord.  
General Counsel Division, MC-018  
Office of Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR96-0629

Dear Mr. Ybarra:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37634.

The Office of the Attorney General's Elder Law and Public Health Division (the "division") received an open records request for "any information you may have in your files in relation to the billing of OHIP by National Medical Enterprises (Psychiatric Institutes of America), Charter Medical Corp., Hospital Corporation of America or Community Psychiatric Centers." You have submitted to this office as responsive to the request certain records containing the names of certain individuals that you contend come under the protection of common-law privacy and the informer's privilege. You seek to withhold the information you have highlighted in red pursuant to section 552.101 of the Government Code.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Among the categories of information protected by common-law privacy is information revealing that a particular individual suffers from mental or emotional disorders. *See* Open Records Decision Nos. 343 (1982), 262 (1980). We agree that in this instance the division must withhold the names of all patients in the psychiatric hospitals pursuant to common-law privacy.

You also seek to withhold the names of certain other individuals pursuant to the informer's privilege. In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law. When information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records Decision Nos. 515 (1988), 191 (1978). Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285 (1981), 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988), 391 (1983).

You have not explained to this office, nor is it apparent from our review of the documents submitted, what violation of law has been alleged by these "informers." The Open Records Act places on the custodian of records the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Because you have not supplied this office with any explanation as to how or why the informer's privilege should apply to the individuals at issue, this office has no basis for concluding that the privilege applies to these individuals. We therefore conclude that the division has waived the protection of the privilege in this particular instance. The names of the "informers" must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/RWP/rho

Ref.: ID# 37634

Enclosures: Submitted documents

cc: Mr. George Mentis  
Executive Director  
Citizens Commission on Human Rights  
696 Young Street  
Toronto, Ontario Canada M4Y2A7  
(w/o enclosures)